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IN THE

Supreme Court of The United States

October Term, 1969

No. 35, Original

United States of America, Plaintiff,

v.

States of Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida

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MOTION FOR SEVERANCE OF THE STATE OF FLORIDA AND FOR THE APPOINTMENT OF A SPECIAL MASTER AND BRIEF IN SUPPORT OF MOTION

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The Capitol
Tallahassee, Florida

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MOTION FOR SEVERANCE OF THE STATE OF FLORIDA AND FOR THE APPOINTMENT OF A SPECIAL MASTER

The State of Florida moves the Court to sever Florida from the other twelve states listed above in this cause, No. 35, Original, and to appoint a Special Master pursuant to the case of U. S. v. Florida, 363 U. S. 121, 80 S Ct 1026, 4 L. Ed. 1096, decided May 23, 1960.

Dated this_____day of February, 1970.

Respectfully submitted,

EARL FAIRCLOTH
Attorney General of Florida

T. T. TURNBULL
Chief Trial Counsel

The Capitol
Tallahassee, Florida

IN THE SUPREME COURT OF THE UNITED STATES

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BRIEF OF THE STATE OF FLORIDA IN SUPPORT OF ITS MOTION FOR SEVERANCE AND FOR THE APPOINTMENT OF A SPECIAL MASTER

Again we refer to the case of U. S. v. **Florida**, No. 10, Original, decided May 23, 1960, 363 U.S. 121, 80 S. Ct. 1026, 4 L. Ed. 1096.

As a portion of the appendix, being noted as Exhibit 1, there is attached hereto that portion of the original complaint (Original No. 9) involving the State of Florida, being the "Fifth Cause of Action," and this complaint, with specificity, alleges that Florida claims in excess of three nautical miles, not only on its Gulf Coast, but also on its Atlantic Coast. Florida thereupon contends, and now asserts, that its claim seaward from its low water mark has been preserved by U. S. v. **Florida**, **supra**, and it is further contended that by the instant case, being No. 35, Original, the Thirteenth Cause of Action, specified in paragraph XX, preserves and protects this claim of the State of Florida when, by the last sentence of paragraph XX, it is stated "the term 'Atlantic Ocean' as used herein is to be understood as including the Straits of Florida." (See Appendix 2.)

We think that this Court will take judicial knowledge of the fact that at some point along Florida's Eastern seaboard, the Atlantic Ocean and the Gulf of Mexico come together or merge, if this is the correct word. We think, and we now contend, that this point of merger runs in a line generally southeastwardly from Palm Beach. We think, and we contend, that under the case of U. S. v. Florida, supra, we would be entitled to have this Court make the determination of exactly where this line exists. Under all circumstances and under U.S. v. Florida, supra, Florida is entitled to three marine leagues into the Gulf of Merico. Admittedly another factual situation arises and we state it as follows:

Between the southern tip of the Florida Keys, meaning the Marquesas Keys and the Dry Tortugas and the Keys and atolls constituting this body of dry land, there is a stretch of deep water. Under the case of U. S. v. California, 332 U. S. 19, 67 S. Ct. 1658, 91 L. Ed. 889, and the subsequent appearance of this case before this Court, the Dry Tortugas may be held to be an insular possession of the State of Florida. Notwithstanding this fact, the 1868 Constitution of Florida, about which we will write, post, describes the Dry Tortugas as being a part and portion of the State of Florida from whence the measurement or the bearing northwestwardly to three leagues off the mainland of the coast of the State of Florida must be collaborated.

We present the fact that this Court should take judicial knowledge that Cuba is less than 80 miles from Florida; we think this Court will likewise take judicial knowledge of the fact that the warm waters of the Gulf of Mexico are prolific breeders of shrimps and other crustacea, together with fish of many kinds and varieties; we think that this Court will take judicial knowledge of Cuban trawlers and trawlers from other areas and netters and fishermen, in general, come into and encroach upon the waters of Florida, even going into Florida Bay. This area has been designated by the State of Florida as a shrimp breeding area not subject to fishing, unless and until shrimp in the area

are of sufficient size.

We have pointed out these facts as being indicative of the necessity to sever Florida from the other States and to have the Court appoint a Special Master that may particularly and with specificity designate the boundaries of the State of Florida, so that we may from thence forth be able not only to protect spawning areas for the benefit of the State and the United States, but also to protect the fisheries and the fishing industry. At this time, and in this area, Florida has issued no oil or gas leases, or any other expiration contracts or licenses.

The area just above identified patently falls in the Gulf of Mexico, but just as patently, by virtue of Florida's 1868 Constitution, approved by Congress, the exact delineation needs, we think, judicial determination. This same fact is true as we go on the other side (the southern and southeasterly side of the Florida Keys). We feel that this Court will judicially note that there are many reefs, atolls, and rock clusters that are not awash at mean high tide. The existence and location of these land masses must be physically determmed by evidence that Florida would propose and that we feel sure that the Government would propose. Thereafter, a Special Master would make his determination and we think that it would be, frankly, somewhat of an imposition on this Court to have the evidence presented to it in any other fashion, save and except by report and recommendation of a Special Master.

In U. S. v. Florida, this Court recognized that the Congress, upon its readmission of the State of Florida, gave consideration to the boundary of the State of Florida then contained in the Constitution approved by the Congress for Florida upon its readmission. That boundary, as contained in 1868 Constitution, is included as Exhibit 3 of the Appendix attached hereto.

We quote from U. S. v. Florida (See pp. 1100, 1101, 4 L. Ed. 2d):

The voluminous references to the Reconstruction debates fail to show us precisely how closely the Southern States' Reconstruction Constitutions were examined. We cannot know, for sure, whether all or any of the Congressmen or Senators gave special attention to Florida's boundary description. We are sure, however, that this constitution was examined and approved as a whole, regardless of how thorough that examination may have been, and we think that the 1953 Submerged Lands Act requires no more than this. Moreover, the Hearings and the Reports on the Submerged Lands Act show, as the Government's brief concedes, that those who wrote into that measure a provision whereby a State was granted up to three leagues if such a boundary had been "heretofore approved by Congress," had their minds specifically focused on Florida's claim based on submission of its 1868 Constitution to Congress. When Florida's claims were mentioned in the hearings it was generally assumed that Congress had previously

*[363 US 128]

"approved" its three-league *boundaries. [15] The Senate Report on a prior bill, set forth as a part of the report on the 1953 Act, pointed out that "In 1868 Congress approved the Constitution of Florida, in which its boundaries were defined as extending 3 marine leagues seaward and a like distance into the Gulf of Mexico." S Rep No. 133, 83d Cong, 1st Sess 64-65. [16] The language of the Submerged Lands Act was at least in part designed to give Florida an opportunity to prove its right to adjacent submerged lands so as to remedy what the Congress evidently felt had been an injustice to Florida. Upon proof that Florida's claims met the statutory standard—"boundaries ... heretofore approved by the Congress"—the Act was intended to "confirm" and "restore" the

three-league ownership Florida had claimed as its own so long and which claim this Court had in effect rejected in United States v Texas, 339 US 707, 94 L ed 1221, 70 S Ct 918; United States v Louisiana, 339 US 699, 94 L ed 1216, 70 S Ct 914; and United States v California, 332 US 19, 91 L ed 1889, 67 S Ct 1658. As previously shown, Congress in 1868 did approve Florida's claim to a boundary three leagues from its shores. And, as we have held, the 1953 Act was within

*[363 US 129]

the power of *Congress to enact. Alabama v Texas, 347 US 272, 98 L ed 689, 74 S Ct 481. See also United States v California, 332 US 19, 27, 91 L ed 1889, 1893, 67 S Ct 1658.

The Submerged Lands Act, 43 USCA, Section 1312, contains this savings clause:

"Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any state's seaward boundary beyond three geographical miles if it was so provided by its Constitution or laws prior to all at the time such state became a member of the Union, or if it has been heretofore approved by Congress."

We thereupon submit the following:

1. U. S. v. Florida is this Court's authority for the fact that Florida's boundary contained in the 1868 Constitution was approved by Congress;

2. That Florida's boundary on both the Atlantic and Gulf Coast sides of the State is either three marine leagues or is, in the alternative, at the edge of the Gulf Stream; and

3. That this Court has reserved jurisdiction over the original case of U. S. v. Florida for the purpose of making a

factual determination as to the location of the boundary "on the ground."

We hasten at this point to call the Court's attention to Chapter 69-4, Florida Statutes of 1969, a copy of which is attached as a portion of the Appendix, marked Exhibit 4. This act is a cooperative type act between the State of Florida and the State of Georgia that as between these two states, and subject to the approval of the Congress, determines the boundaries between these two states so that, in turn, boundaries of all states north of Georgia may likewise follow the same procedure. This fact is not material to the legal issues now before the Court, but it is the feeling of the State of Florida that, factually, it may be important, and it goes without saying that counsel for the State of Florida could not do less than present this fact to the Court.

DATED this _____ day of February, 1970.

Respectfully submitted,

EARL FAIRCLOTH
Attorney General of Florida

_____

T. T. TURNBULL
Chief Trial Counsel

The Capitol
Tallahassee, Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion for Severance of the State of Florida and for the Appointment of a Special Master and a copy of the foregoing Brief of the State of Florida in Support of Its Motion for Severance and for the Appointment of a Special Master has been furnished to each Attorney General whose state is involved in this litigation, as well as 25 copies to the Solicitor General of the United States, on this _____day of February, 1970.

_____

ORIGINAL NO. 9

Fifth Cause of Action
(Against the State of Florida)

I

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States, Title 28, United States Code, Section 1251 (b) (2), and this Court's order entered in this case on June 24, 1957.

II

On June 5, 1950, the United States was and, except as set forth in Paragraph III hereof, has ever since been and now is entitled to exclusive possession of and full dominion and power over the lands, minerals and other things underlying the Gulf of Mexico, Straits of Florida and Atlantic Ocean, extending seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Florida to the edge of the continental shelf; and the State of Florida did not have on June 5, 1950, and, except as set forth in Paragraph III hereof, has never since had and does not now have any title thereto or property interest therein.

III

On May 22, 1953, by Public Law 31 of the 83rd Congress, known as the Submerged Lands Act, 67 Statutes at Large 29, the United States granted to the State of Florida the title to and ownership of the submerged lands and natural resources lying in the Gulf of Mexico, Straits of Florida and Atlantic Ocean within the boundaries of said State, but not extending seaward more than three geographic miles from the ordinary low-water mark or from the outer limit of inland waters unless the boundary of said State as it existed when the State became a member of the Union, or as approved by Congress, extended more than three geographic miles therefrom into the Gulf of Mexico, and not extending seaward more than three marine leagues therefrom into the Gulf of Mexico in any

event; and by said Act the United States released its claim for money or damages arising out of any operations by the State of Florida or under its authority in the area so granted.

IV

When the State of Florida became a member of the Union its boundary did not extend into the Gulf of Mexico, Straits of Florida or Atlantic Ocean more than three geographic miles from the ordinary low-water mark or from the outer limit of inland waters, and the Congress of the United States has never approved a boundary for said State extending into the Gulf of Mexico, Straits of Florida or Atlantic Ocean more than three geographic miles from the ordinary low-water mark or from the outer limit of inland waters.

V

By reason of the foregoing, the United States is now entitled to exclusive possession of and full dominion and power over the lands, minerals and other things underlying the Gulf of Mexico, Straits of Florida and Atlantic Ocean, lying more than three geographic miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Florida, extending seaward to the edge of the continental shelf, and is entitled to an accounting for all sums of money derived therefrom by the State of Florida after June 5, 1950.

VI

The State of Florida claims some right, title or interest adverse to the United States in the lands, minerals and other things underlying the Gulf of Mexico, Straits of Florida and Atlantic Ocean, lying more than three geographic miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Florida, and has not accounted to the United States for all or any sums of money derived therefrom after June 5, 1950.

VII

The original jurisdiction of this Court is invoked because the Court by its order of June 24, 1957, declared that the issues in the First Cause of Action are so related to the possible interests of Florida in the subject matter of the suit that the just, orderly and effective determination of such issues requires

that they be adjudicated in a proceeding in which all the interested parties are before the Court. The Court by said order allowed Florida 60 days within which to intervene and, if it failed to do so, allowed the United States 60 days thereafter within which to add Florida as a party. Florida has not intervened, and the 60 days allowed it for doing so have expired.

Wherefore, the United States prays that the defendants be required to answer this amended complaint within 30 days and that a decree be entered declaring the rights of the United States as against said States in the lands, minerals and other things underlying the Gulf of Mexico, Straits of Florida and Atlantic Ocean, lying more than three geographic and extending seaward to the edge of the continental shelf, enjoining said States and all persons claimin under them from interfering with the rights of the United States therein, and requiring said States to account for all sums of money derived therefrom after June 5, 1950.

J. Lee Rankin,
Solicitor General.

ORIGINAL NO. 35

THIRTEENTH CAUSE OF ACTION
(Against the State of Florida)
XX

The United States repeats and realleges the allegations contained in paragraphs I through IV and VI through VIII hereof, with the same force and effect as if herein set forth. The term "Atlantic Ocean" as used herein is to be understood as including the Straits of Florida.

WHEREFORE, the United States prays that the defendants be required to answer this complaint, and that a decree be entered declaring the rights of the United States as against the defendants in the subsoil, seabed, and natural resources underlying the Atlantic Ocean, including the Straits of Florida, lying more than three geographical miles seaward from the ordinary low-water mark and from the outer limit of inland waters to the edge of the continental shelf, and requiring said defendants to account for all sums of money derived therefrom, and for such other and further relief as may be proper in the premises.

John N. Mitchell,
Attorney General.
Erwin N. Griswold,
Solicitor General.

April 1969.

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ARTICLE I
BOUNDARIES

The boundaries of the State of Florida shall be as follows: Commencing at the mouth of the river Perdido; from thence up the middle of said river to where it intersects the south boundary line of the State of Alabama, and the thirty-first degree of north latitude; then due east to the Chattahoochee river; then down the middle of said river to its confluence with the Flint river; from thence straight to the head of the St. Mary's river; then down the middle of said river to the Atlantic ocean; thence southeastwardly along the coast to the edge of the Gulf Stream; thence southwestwardly along the edge of the Gulf Stream and Florida Reefs to and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from the land, to a point west of the mouth of the Perdido river; thence to the place of beginning.

***

CHAPTER 69-4

Senate Bill No. 405

AN ACT relating to the boundary line between the states of Florida and Georgia; amending Section 6.09, Florida Statutes, so as to limit the boundary from the mouth of the Saint Marys River to the seaward limit of Florida as now or hereafter fixed by the Congress of the United States; to provide that such boundary is to be considered to extend beyond the seaward limit of the sovereign jurisdiction of this state should any need for further delimitation arise; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 6.09, Florida Statutes, is amended to read:

6.09 Boundary between Florida and Georgia.–

(1) The line run and marked by B. J. Whiter, Jr., on the part of Florida and G. J. Orr on the part of Georgia is the permanent boundary line between the states of Florida and Georgia.

(2) The boundary line between the states of Florida and Georgia as described in subsection (1) herein shall be extended from a point 37 links north of Ellicotts Mound on the Saint Marys River; thence down said river to the Atlantic ocean; hence along the middle of the presently existing Saint Marys entrance navigational channel to the point of intersection with a hypothetical line connecting the seaward most points of the jetties now protecting such channel; thence along said line to a control point of latitude 30° 42' 45.6" north, longitude 81° 24' 15.9" west, thence due east to the seaward limit of Florida as now or hereafter fixed by the Congress of the United States; such boundary to be extended on the same true 90° bearing so far as a need for further delimitation may arise.

Section 2. This Act shall not become effective until and unless by November 1, 1970, the Congress of the United States shall ratify, confirm, adopt or otherwise consent thereof.

Approved by the Governor April 25, 1969.

Filed in Office Secretary of State April 28, 1969.